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AUTHOR Thorpe, James
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ABSTRACT

This pamphlet, written from the point of view of the scholar rather than the librarian, was compiled to help scholars who are inexperienced in the use of manuscripts to overcome the difficulties they face in consulting and using manuscripts for their research. Topics discussed include: locating manuscripts, research from a distance, visiting a library, private collections, access to manuscripts (admittance, regulations, aids, photocopies, and permission to publish), and literary property rights (basic facts, copyright, common law protection, ownership of literary rights, unpublished letters, transfer of literary rights, infringement of literary rights, literary rights in other countries, and international copyright). (JM)

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THE USE OF MANUSCRIPTS IN LITERARY RESEARCH

Problems of Access and Literary Property Rights

By
James Thorpe

Modern Language Association of America
New York • 1974

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PREFACE

Manuscripts have special importance in literary research. They take many forms: the author's manuscript of a literary work, his notebooks or diaries or scribbles on the backs of envelopes, letters by or to or about the author, and the like.

The scholar values manuscripts because they so frequently offer direct testimony of primary significance to his work. Librarians value manuscripts, too, as do private collectors, and their esteem leads them to give special protection to manuscripts; consequently, scholars often find it difficult to consult manuscripts with the ease that they prefer. Manuscripts also have certain legal protections, not all of which are afforded printed books; as a result, scholars sometimes encounter restrictions which prevent them from using manuscripts with the freedom that they wish.

This pamphlet is an effort to help scholars who are not experienced in the use of manuscripts to overcome these difficulties, and it is written from the point of view of the scholar. Virtually all articles I have seen about the use of manuscripts are in journals intended mainly for librarians, and they are written from a curatorial or legal point of view. Librarians have their problems, of course: theirs is the job of safeguarding irreplaceable material, or controlling access to it, of preventing irresponsible use of it. But there is a body of specialists competent to worry about their problems. This pamphlet is for people on the scholarly side of the table.

I have accumulated information and opinions from a number of sources. Best of all, from scholars in our own fields, scholars experienced in the use of manuscripts, scholars who have worked in the principal libraries and private collections in various countries. I have also consulted with the heads of about forty libraries, some twenty-three in this country and seventeen abroad; these libraries include most of the ones most frequently used by scholars in our fields. I have cited their principles and procedures as examples throughout; but I have not set forth the full rules of any of them, nor constructed the snare of a statistical summary or an arithmetic average of anything.

Many restrictions limit scholars in their use of manuscripts, and most of those restrictions are probably necessary. A few are outmoded, perhaps, but I have noticed a receptiveness on the part of librarians to moderate restrictive policies for the benefit of scholars. It may be that a happy by-product of this inquiry will be the alteration of some practices that have occasionally frustrated research.

The Committee on Research Activities of the Modern Language Association thought they saw a need for an essay on this subject, and I agreed to write one. Several other professional groups have recently concerned themselves with these matters, generally through a Committee on Access to Manuscripts. These groups include the Rare Books and Manuscripts Section of the Association of College and Research Libraries in

the American Library Association; the Association of Research Libraries; and the Society of American Archivists. The text of this pamphlet was submitted to all of them for their advice and suggestions; I have made various revisions after receiving their useful comments, which I gratefully acknowledge. I wish also to thank two of my colleagues at the Huntington Library, Daniel H. Woodward, Librarian, and Jean Preston, Curator of Manuscripts, for giving me the benefit of their experience.

This publication is cosponsored by the Rare Books and Manuscripts Section of the Association of College and Research Libraries in the American Library Association, through its Committee on Manuscripts under the chairmanship of Clyde C. Walton. I am happy that they have chosen to add their approbation to this effort to aid scholars and scholarship.

This pamphlet is published by the Modern Language Association under the authority of its Committee on Research Activities. It is not a report from them, of course, nor is it an official statement by the Modern Language Association. It is more like an answer to a request for advice, supposing that the question raiser is someone who wants to learn how to use manuscripts in literary research with the least inconvenience and the least uncertainty. I hope that this answer will be helpful.

James Thorpe
Huntington Library, Art Gallery, and Botanical Gardens

PRELIMINARIES

Experienced scholars have urged me to put forward, first of all, one piece of advice to those who are less experienced in the use of manuscripts. It is that much work should precede any effort to use manuscript materials. It is a common complaint among librarians that some students undertake to study manuscripts without knowing enough about the special subject on which they are trying to work. In the commendable search for originality, sometimes people turn too quickly to manuscripts, without mastering the knowledge that is more widely available.

Locating Manuscripts

In particular, a considerable amount of preliminary work should precede any visit to a distant repository of manuscripts. In the process of specialized study, the scholar will generally learn—from careful use of printed editions or from references in biographies or other scholarly studies—where the principal collections of manuscripts on his subject are located. If his interest is Thomas Wolfe, for example, he will doubtless learn that there are many Thomas Wolfe manuscripts at Harvard; similarly, specialists will become aware of Schiller materials at Marbach, Gertrude Stein papers at Yale, a Mann repository in Zurich, and a Jack London collection at the Huntington. The beginning student might not as easily realize that at least nineteen other libraries have Gertrude Stein materials, eleven others have Thomas Wolfe manuscripts, and twenty-nine others list Jack London manuscripts.

There are several general finding lists to locate manuscripts in the fields of modern literatures. As an aid to locating manuscripts in American collections, one guide provides a checklist of American literary manuscripts;[1] another gives a census of medieval and Renaissance manuscripts;[2] another provides a general guide to the contents of archives and manuscript collections in the United States;[3] and another is a national union catalog of

[1] *American Literary Manuscripts* (Austin: Univ. of Texas Press, 1960). This volume, which was prepared by the Committee on Manuscript Holdings of the MLA American Literature Section, is a checklist of holdings in academic, historical, and public libraries in the United States. It lists, by author, the collections that have manuscript holdings of or relating to that author; and it reports, by category, how many items are in each collection. An expanded second edition is scheduled for publication by the same publisher in 1975-76.

[2] *Census of Medieval and Renaissance Manuscripts in the United States and Canada*, comp. Seymour de Ricci and William J. Wilson (New York: H.W. Wilson Co., 1935-40), 3 vols. *Supplement*, comp. C.U. Faye and W.H. Bond (New York: The Bibliographical Society of America, 1962). This census of manuscripts before 1600 is arranged by state, and by collections within the state. Each manuscript is individually described, and there is a detailed index. The repositories to which more than 100 pages are devoted include: Pierpont Morgan Library, Folger, Harvard, Huntington, Walters Art Gallery, and Library of Congress.

[3] *A Guide to Archives and Manuscripts in the United States*, comp. Philip M. Hamer (New Haven: Yale Univ. Press, 1961). This work, arranged by state, gives a moderately detailed description of the principal holdings of U.S. libraries and archives, and it has a valuable detailed index. The repositories to which more than 20 columns are devoted include: Library of Congress, Yale, Harvard, New York Public, and Huntington.

manuscript collections.[4] Specialists can learn, through the use of their ordinary bibliographical tools, where to turn for other helpful guides and finding lists. Under some circumstances—such as in editing the complete letters of an author—the scholar will not be content with rough or incomplete information, but the methods of a rigorous search for everything are beyond the scope of this pamphlet.[5]

Research from a Distance

Once the scholar has determined that a certain collection contains material of interest to him, he should learn as much as he can about its holdings. Too often, it appears, scholars follow their first impulse and go to the repository to find out what the holdings are. Often he can learn a great deal about them in his own library. Perhaps there is a printed account of the manuscript holdings of interest to him in the collection.[6] Frequently there are brief introductory surveys or guides to the manuscript collections of that library.[7] Occasionally a printed catalog includes all of the manuscripts in a library.[8] More often—as in the case of large libraries—there are printed catalogs of important collections.[9] Librarians are understandably impatient with scholars who have not acquainted themselves with the printed guides or catalogs to the collections, and are less than enthusiastic about spending time in answering questions that have

[4]*The National Union Catalog of Manuscript Collections*. This Catalog, the first volume of which appeared in 1962 for 1959-61, is now an annual (with an index), published by the Library of Congress. Its purpose is to bring scholars and manuscripts together. It describes large groups of papers at repositories that regularly admit persons for research. The volumes through the one for 1970 describe more than 27,000 collections in 805 repositories. For each volume the Index (which is about as long as the descriptive catalog cards that make up the text) is one alphabetical reference to the names, places, subjects, and named historical periods reported in the catalog entries.

[5]Such a search would include a scrutiny of all previous editions and scholarship for clues; examination of the printed catalogs of likely collections; visits to or correspondence with all likely collections, collectors, and scholars; a search of auction records and auction catalogs; and open letters to appropriate periodicals (such as the *TLS* or the *New York Times Book Review*) to request help from readers. Even so, the chances of complete success are slight.

[6]E.g., the student can find lists of the English and American literary manuscripts at the Huntington Library: "American Literary Manuscripts in the Huntington Library," comp. Herbert C. Schulz, *Huntington Library Quarterly*, 22 (1959), 209-50; "English Literary Manuscripts in the Huntington Library," comp. Schulz, *Huntington Library Quarterly*, 31 (1968), 251-302. Another example of such a list is "Modern Literary Manuscripts in the Morgan Library," comp. George K. Boyce, *PMLA*, 67 (1952), 3-36.

[7]E.g., these two pamphlets: *The Manuscript Collections of the Princeton University Library: An Introductory Survey*, comp. Alexander P. Clark (Princeton: Princeton University Library, 1958), 32 pp.; *Manuscript Collections in the Columbia University Libraries: A Descriptive List* (New York: Columbia University Libraries, 1959), 104 pp.

[8]E.g., *Catalog of Manuscripts of the Folger Shakespeare Library*, 3 vols. (Boston: G.K. Hall and Co., 1971). Or, somewhat similarly, there is an *Index to Manuscripts* in the Edinburgh University Library, 2 vols. (Boston: Hall, 1964).

[9]There is an abundance of such catalogs, particularly for the major British and European libraries. The British Museum has printed catalogs of many of its collections, such as the Harleian Manuscripts; Colleges in the English Universities (as, at Cambridge, Trinity Coll., St. John's Coll., and Corpus Christi Coll.) have printed catalogs of their manuscripts; the catalogs of several of the collections at the Bodleian Library have been printed, as well as a 7-volume *Summary Catalogue*. Likewise, on the Continent, the Bibliothèque Nationale has a massive general catalog of Latin manuscripts, as well as one of Latin and French manuscripts acquired since 1891; there is the very extensive *Catalogue général des manuscrits des bibliothèques publiques de France*; and the Vatican Library has a multivolume catalog of its Latin manuscripts.

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already been answered in print. "And do you by chance have any H.G. Wells manuscripts?" If this question is directed at the librarian of a place that specializes in H.G. Wells manuscripts and that has been at pains to record and publicize its holdings, his opinion of scholars drops a notch.

Scholars often find it convenient to try to solve some of their problems by correspondence. Most libraries have facilities for handling correspondence, and most of them answer promptly; but occasionally one's patience must be exercised for a period of some months, particularly when dealing with libraries in southern Europe.

In writing to libraries, it is best to ask one's questions as specifically as possible, whether they be about holdings or about a particular manuscript or about obtaining photocopies. General questions (such as "What do you have on the Pre-Raphaelite poets?") or general commands (such as "Send me xeroxes of all your letters relating to the Prix Goncourt") are often rebuffed and sometimes unanswered. But serious questions from serious scholars ordinarily get serious attention at research libraries. Some libraries simply do not have the staff to provide this service; but unless the scholar knows that a library does not answer research questions, it is always worth asking. At the Huntington, for example, the Manuscript Department annually answers more than 1,500 letters from scholars who are making research inquiries. At many research libraries in the United States, library staff members will spend up to about an hour in trying to answer a letter of inquiry from a scholar. For inquiries that require a longer period of time, many libraries will offer to put the scholar in touch with a local professional searcher to handle the task for an appropriate fee. The Public Record Office in London, for example, maintains a list of qualified professionals, and the Bibliothèque Nationale has a special department for handling (for a fee) extensive inquiries. It is always appropriate to ask whether the library is prepared to arrange the employment of a suitable person to act on one's behalf in the study of manuscripts.

There are a number of ways to learn the mailing address of a library with which one is not acquainted. One simple way is by reference to *The World of Learning*, which has a section on "Libraries and Archives" and one on "Universities" for each country listed (including the United States); information is given on the size and special strengths of the collection, the name and mailing address of the Director or Librarian, and sometimes the name and proper title (Keeper of Manuscripts, Curator of Manuscripts, Head of Special Collections) of the person responsible for manuscripts.[10] In my experience, it usually works out best to address inquiries about manuscripts to the person or office responsible for manuscripts rather than to the head of the entire library; but in this, as in so many other matters about the procedures of scholarship, there are doubtless many divergences from any experiential norm; and one is always dealing in practice with a specific institution, not with the average of a lot of varied places.

[10]This annual reference work, published in London by Europa Publications Ltd. and widely available, now consists of 2 stout volumes each year. General headings (in addition to Libraries and Archives, and Universities) for each country are Academies, Learned Societies, Research Institutes, and Museums and Art Galleries.

Visiting a Library

Let us suppose, now, that the scholar has decided that he must visit one or more repositories of manuscripts. He has already, we will assume, determined—as far as he can (from finding lists and printed guides and catalogs and correspondence) or as far as he needs to know—what the nature and extent of the holdings of interest to him are. He has obtained photocopies where he can and where they will adequately serve his needs, and the purpose of his visit is clear in his own mind. There is then one important step that many people neglect. He should write, in advance of his visit, to seek permission to use the library: he should identify himself, indicate his qualifications, suggest the nature of his project, mention the materials (or kinds of materials) he wishes to consult, and tell the approximate date of his arrival and the proposed length of his visit. Such a letter serves many important purposes: it affords the occasion for an early warning of any restrictions to the consultation of papers of interest or of any periods when the library will be closed, it gives the library a chance to plan for the visitor by reserving working space for him and by making other plans which may facilitate his use of manuscripts, and it is always pleasant to be expected and welcomed. At a few places, applying in advance is more than a matter of courtesy or convenience: at some libraries, scholars are required to make application for admission in advance. At the British Museum and at the Brotherton Library of the University of Leeds, for example, applications must normally be made at least two days before one expects to use the library; in theory, at least, longer is necessary at libraries that require references to be checked, though in practice there is usually no delay for scholars who can identify themselves adequately.

Research libraries have to assure themselves that applicants meet their standard of qualifications for the use of manuscripts. The language setting forth the standards varies somewhat from place to place, and the administration of the procedures varies even more. At public and quasi-public institutions, the standards are expressed with a maximum of vagueness: "persons engaged in serious research who present proper identification" (Library of Congress); "a fit and proper person to use the Students' Room" (British Museum). In most research libraries, the use of manuscripts is limited to (in the formulaic phrases) "qualified scholars" (Yale), "any genuine and well qualified research worker" (Trinity College, Dublin), "any serious scholar" (Bodleian), "any qualified scholar" (Texas). There are many elaborations, most of which do not add usable details. "Any person of good conduct" may apply to use manuscripts at the University of Chicago, and permission will be granted to "qualified and properly accredited persons whose purposes are acceptable." As the head of one large university library privately puts it, "access is given freely to 'qualified scholars' (this term has not been defined)."

Several libraries pride themselves on having "no written or formal statement of policy regarding use and availability of our literary manuscripts"; and the head of one of the greatest libraries writes, "I have an innate horror of promulgating hard and fast rules that can be cited to me

chapter and verse as a reason for doing something that I do not think the library should do." Another librarian warns me that admission to the library "does not automatically entitle a Reader to consult manuscripts. We require to be convinced that they are essential to the Reader's scholarly needs." The New York Public Library formally stipulates that "readers are expected to present evidence that preliminary bibliographical preparation and literature searching have been completed and that the materials being sought are directly relevant to their research." In the case of libraries without an established policy, occasionally the autocrat of the decision table may seem to be a curmudgeon: "We do not have a published policy statement about our manuscripts. I can tell you briefly that our manuscripts are not open to everyone and anyone, and we reserve them for use by the most competent scholars." One may be excused for feeling apprehensive lest the curmudgeon also be the judge of competency among the scholars.

I believe that the bark of these regulations is worse than their bite. In private letters, the librarians say such things as: "We judge each case on its own merits, but rarely, if ever, is anyone turned away"; or, "we are lenient and permissive"; or, "all who have reason to use them may have access to manuscripts"; or, "we have a completely open and non-restrictive policy concerning the use of our manuscripts by qualified scholars." To sum it up, "I need hardly add," writes one, "that no genuine scholarly request is refused."

I speak at this length about admission to manuscript repositories both as a warning and as a reassurance to scholars. A warning that the visiting scholar will, in many places, be treated (initially, at least) with chilliness and impersonality. And a reassurance that the visiting scholar will, almost universally, be afforded the full facilities that the repository has to offer provided he can retain his patience and his understanding of the local situation.

The smaller the number of visiting scholars in relation to the size of the regular staff, the more casual and informal and permissive the administration tends to be. There is much pleasure in these personal and intimate situations. But the greatest concentrations of the needed manuscripts are more likely to be in the large, overused libraries. There one is likely to be surrounded by a network of rules and procedures. It will begin with the requirement of completing Form 393h as an application to become a Reader, and it will continue with carrying on one's work in accordance with the provisions of Technical Memorandum 35. But one has no choice: the manuscripts that one needs are there.

The visiting scholar will readily recognize that research libraries are equipped to pass only a formal judgment on his qualifications: that he has such and such advanced degrees, that he is employed at a given college at a certain rank, that he is the author of something or other, that he is working on a worthwhile subject. It is hard for me to imagine that any member of the Modern Language Association will be denied the use of any research library normally open to scholarly use if that member wishes to undertake a serious piece of research; I say this on the assumption that the member is

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on the regular faculty of some reputable American college, or a graduate student engaged in research in partial fulfillment of the requirements for an advanced degree at an American university, or a person with the training and experience associated with the one or the other.

Despite the intimation that admission is based on the merits of the individual applicant, the visiting scholar will easily realize that, even at the greatest research libraries, there are probably not more than one or two people (if that many) who are truly competent to pass on his real qualifications as a scholar. In fact, the registration and admission of scholars are mainly performed as clerical operations, sometimes with the perfunctory approval of a junior administrator.

Visiting scholars will, I am sure, understand that research libraries face the problem of excluding (so far as they can reasonably and humanely do so) those who are actually unqualified in research. Libraries, especially in metropolitan areas, have to cope with clamoring demands from those people who are ambitious but untrained, those who wish to keep warm, those who need occupation in order to retain their self-esteem, the senile, the curious, and many lost souls. The procedures for admission are designed to insure that the library is used, as much as can be, for its principal purposes; the true scholar will, I hope, not be impatient if he is made to stand in the docket as guilty until proved innocent. These inconveniences can be mainly avoided, as I have suggested, by applying for admission in advance, by letter.

Private Collections

Gaining permission to use manuscripts in private collections is another matter. Many private collectors have told me that they are sometimes attacked by scholars who demand to see their materials as a matter of right. Many scholars have told me that they sometimes receive no response whatsoever from requests to private collectors. While I imagine that these are extremes, scholars should realize that private collectors usually think of their manuscripts as their private property, available to be seen only at their discretion. The scholar has no inherent right to see privately owned manuscripts, and the argument that seeing them will be beneficial to the advancement of learning does not always impress collectors. Often the lack of response from collectors is occasioned by nothing more sinister than lack of interest or fear of inconvenience. Those who have built their own collections are generally more interested in the materials than are those who have inherited them, along with dominant genes relating to horses and dogs. And often collectors do not have the facilities to show their manuscripts without disrupting their households.

I do not know of any golden key that will assure scholarly access to private collections. Politeness and tact are great aids. Persistence is helpful; sometimes a second or third letter will make the door swing open. In hard cases, it is sometimes helpful to seek the intercession of a third party, someone who is a personal acquaintance of the collector, or a scholar who can speak with authority about the applicant or about the value of the manuscripts to the project, or a colleague who belongs to an institution with which the collector is associated. Scholars should realize that a

collector may frequently be badgered by persons who are actually unqualified to use his materials, or who make excessive demands on him, or who repay his generosity with rudeness; and, as a consequence of these experiences, the initial response of the collector may be negative. Scholars should also remember that few collectors have staffs to answer inquiries about their manuscripts and that few collectors are themselves trained in bibliography, paleography, or in most of the other specialties that may be requisite to responding to detailed queries from scholars. One can always hope, however, that a collector will, in due course, give any qualified scholar access to the manuscripts he needs.

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ACCESS TO MANUSCRIPTS

The General Situation

Scholars gain access to manuscripts in accordance with the policies set by the people in charge of the repositories, and those policies reflect the views of librarians as to what they think their main responsibilities are. No single vision is shared by all librarians, of course. It has proved as difficult as expected for the members of various professional groups at work on problems of access to manuscripts to reach agreement on any except trivial or mechanical details. But some generalizations—though there are many exceptions—can provide an instructive background for wandering scholars.

Librarians of rare book and manuscript collections in the United States have altered some of their views about the order of importance of their basic responsibilities. Protecting and caring for materials are fundamental duties of librarians, of course, along with restricting the use of materials to those who are qualified to use them. It is my impression that librarians of a generation or so ago discharged these duties with greater rigidity and with a higher sense of moral superiority in their own devotion than they do today. Some librarians appeared to cast themselves in the role of lineal descendants of the great collectors and associated more with private collectors than with scholars. Acquiring and protecting materials were, in their view, activities more central to their role than was making materials available for scholarly use.

"Time was," wrote one librarian, considering the matter retrospectively in 1956, "when the librarian was almost a miser. Exercising a broad knowledge and refined taste, he decided what printed and manuscript material was worth preserving, he went out and collected it, and he arranged it according to some system, simple or complex. He was a learned man, a guardian of culture, and he wasn't enthusiastic about the 'intruders' who kept borrowing *his* books." Perhaps the learning, the taste, and the possessiveness of librarians are a little colored in this passage, but the writer seems nostalgic for that "time was" of refinement and learning, before service for intruding scholars became so pressing a duty. "Moreover," he continued, "the fact remains that no librarian has yet won immortality for the services he provided. The librarians who are remembered are those who gave their attention to building up great collections. Those are their monuments." He goes further and says, "To be candid, I fear that librarians have spoiled scholars by waiting on them too much." (Not many scholars would agree, I imagine.) "I am equally concerned, however, about the effect of the newer attitudes and efforts of librarians on themselves. The old librarian had his faults, but he recognized that he had a duty to his material, a mission: namely, to care for it. Without always realizing it, he was a conservationist. He was preserving the records of our culture, not

merely for his generation to consult but for future generations also."[11] I am glad to stand and cheer these sentiments, but I have the feeling that we are being offered a choice between two good things when we should reasonably expect to have both.

It seems to me clear that librarians now have a greater concern for making manuscripts available to scholars, and that they have liberalized their policies and procedures concerning the use of manuscripts. There is now less inclination on the part of librarians to act the part of judge in deciding which scholar shall be vouchsafed the privilege of consulting a given manuscript, and more inclination to offer access to all qualified scholars. In other words, there appears to me to be a much greater openness and liberality toward scholars than there used to be in this country, and that is all to the good, since at the same time reasonable steps are being taken to protect manuscripts. However, the older tradition still persists in some libraries, and there scholars are likely to meet with vestiges of the attitude that they are being tolerated and cautiously permitted to have the privilege of viewing manuscripts because of the special generosity of the librarian.

Some manuscripts may not be available for special reasons. Scholars are sometimes asked to use photocopies of very fragile manuscripts (*Walden*, e.g.) and of landmark manuscripts (the Book of Kells or the Ellesmere Chaucer), on the grounds that the manuscripts might be destroyed by continued use. (If a photocopy will not serve the purpose, it is usually possible to gain access to the original, though often a curator must be assigned to turn the pages of the greatest treasures.)

Some collections are regarded, in library terminology, as "Restricted" (as opposed to "Open") Collections. Restricted papers are those that were acquired (usually through gift, but sometimes by purchase) with certain stipulations which prevent them from being available for scholarly research for a certain period of time. These restrictions are usually imposed to protect the confidentiality of papers that might harm living people, papers that might be libelous, or papers that are thought to affect national security. Sometimes the term "Restricted" is applied to papers that may be consulted with the special permission of the donor or other designated person, while "Closed" is applied to papers that no one may consult until a specified date. Scholars tend to resent restrictions that limit their free access to manuscripts; libraries defend the practice of accepting papers with restrictions on the grounds that this assurance prevents some owners from destroying valuable papers and that the papers thereby are saved for later research. The British Museum policy about such restrictions seems to me admirable: "We would not accept any restriction which applied to a certain class of readers, or in which there were exceptions to be made in favour of certain persons. If donors tried to apply unreasonable restrictions we should refuse the gift."

[11]Howard H. Peckham, "Aiding the Scholar in Using Manuscript Collections," *American Archivist*, 19 (1956), 221-23. The same author reiterated these sentiments even more strongly in another essay at about the same time: "The duty of a librarian or archivist to conserve the material in his care cannot be avoided or lightly dismissed. He holds it in trust for all the people and for the generations not yet born" ("Policies regarding the Use of Manuscripts," *Library Trends*, 5, 1956-57, 363).

Admittance

I have already uttered an exhortation to scholars that they write ahead and announce their intention to visit a library where they have never worked before. In addition to gaining permission to use the library, a letter outlining the project and the material needed will often reach the hands of a knowledgeable staff member who may prepare the way for the scholar by segregating the material wanted or by making lists or notes about sources that might be relevant to the project.

Visitors cannot reasonably expect much help in this way from the handful of major libraries (like the British Museum) which are understaffed with specialists and overused by readers. The greatest willingness to help often comes from libraries where visiting scholars are relatively rare, and the most effective help usually comes from places that are organized as research libraries and think of service to scholars as their essential mission.

Before gaining admittance to a library, it is usual to be asked to complete an application form. Ordinarily the applicant promises, in signing the form, to observe the regulations under which the library operates, and the form frequently includes an agreement by the scholar not to publish anything he consults without having gained written permission to do so.[12] Most places require one or two references to be listed in connection with the application; but in the case of "established scholars"—those who are listed in some appropriate reference work—and scholars who come bearing one or two suitable letters of recommendation, there is ordinarily no delay in gaining admittance.[13] Some form of identification is commonly required, and I urge all traveling scholars to carry unmistakable evidence of their professional status as scholars if they are likely to visit libraries where they are not known and where they have not made prior arrangements for admittance. A typical form of acceptable identification is a letter from the chairman of one's department, or the equivalent. Graduate students are usually received on the basis of a letter from their supervisor, provided the letter clearly identifies the status of both the student and the writer. It is very rare to meet with a requirement so elaborate as that of the Bibliothèque Nationale: an identifying document with a photograph on it, evidence of one's professional status, and two loose photographs—all before the issuance of a reader's identity card. Sometimes there is also a daily register that must be signed. Permission to use the library extends to the

[12]Occasionally the forms are quite explicit on some details which might generally be understood, and sometimes they are a little menacing. The form of the John Rylands University Library of Manchester exacts this promise: "I hereby undertake to replace or pay you on demand, the value of any Book, Manuscript, or Map which shall be injured while in my charge."

[13]The British Museum rules state: "The Trustees cannot accept recommendations of Hotel or Boarding-House Keepers in favour of their guests"—which seems to give some leeway to petitioning scholars. A recommender of an applicant for use of the Public Record Office must declare himself to be "a person of recognised position," with this ameliorating footnote: "A 'person of recognised position' will be usually taken to mean one who is readily identifiable from a professional or other directory, e.g. a Minister of Religion, Medical or Legal Practitioner, etc. Members of the same family should not recommend each other." At the Bodleian Library, the Application for Admission "must be filled in *by the recommender* in clear manuscript (not typescript). The applicant must fill in only the line marked 'Applicant's signature.'"

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use of manuscripts at most places (Folger, Cambridge University Library, Lilly, Princeton), but additional permission is required before manuscripts may be consulted at some places (John Rylands University Library of Manchester, Huntington, University of Pennsylvania).

Scholars who have not worked in libraries outside the United States are sometimes surprised to learn that many foreign libraries are closed for certain extended periods during the year. The length and season of those periods vary greatly. The Vatican Library, for example, is closed from 15 July to 15 September, the British Museum the last complete week in October, the Bibliothèque Nationale the second and third weeks after Easter, the Public Record Office in London the last week in September and the first week in October, the Bodleian one week in late summer and the week following Christmas, the Bibliothèque Mazarine 1-16 August, the Bibliothèque de L'Arsenal 1-15 September, the Austrian National Library 1-21 September.

Similarly, the hours when foreign libraries are open may require American scholars to adjust their usual working habits. The Vatican Library, for example, is open from 8:15 a.m. to 1:30 p.m., the British Museum from 10 a.m. to 4:45 p.m., the Public Record Office from 9:30 a.m. to 5 p.m. (but 9:30 to 1 on Saturday), the Austrian National Library from 9 a.m. to 1 p.m. on Tuesday, Wednesday, and Friday (9 to 12 on Saturday, 1 to 7:45 on Monday and Thursday), and so forth. The visiting scholar will quickly learn how he must adapt his hours to gain working space. At most American libraries, desks are reserved for visitors who are using the library regularly. That is not usually the case at foreign libraries, however, and during the busier seasons at much-used libraries (like the British Museum or the Bibliothèque Nationale) early arrival is sometimes essential in order to get a seat, with the library administrators displaying egalitarian disregard for the competence or incompetence of the users.

Gaining admittance to a private collection poses different problems. As these arrangements should be made in advance, of course, I have already discussed them under the section of "Preliminaries." Once permission has been granted to use a private collection, the scholar should be especially scrupulous in his care of the materials, in his concern for the convenience of the owner, and in his expression of appreciation for the privilege afforded him.

Gordon N. Ray has written an informative and amusing essay on "The Private Collector and the Literary Scholar."[14] Based on written observations made by fifty-six collectors, scholars, librarians, and dealers, it centers on the use of manuscript materials. Members of each group give their personal views of what members of the other group are like, with a multitude of examples about the use, misuse, and nonuse of materials. Sensible suggestions are offered for a code of manners that ought to govern their association, and an Appendix tenders "Advice to a Literary Scholar Approaching a Private Collector in the United Kingdom." Ordinary cour-

[14]Delivered first as a paper at a Clark Library Seminar on 5 April 1969 and published (along with an essay by Louis B. Wright) under the title *The Private Collector and the Support of Scholarship* (Los Angeles: William Andrews Clark Memorial Library, 1969), pp. 25-84.

tesy and regard for the property and convenience of others seem to be the master keys.

Matthew J. Bruccoli has maintained that all too often "the encounters between scholars and collectors are disastrous—and frequently the scholar is to blame. It is a sad truth," he says, "that many—too many scholars—know nothing about the value of rare books and manuscripts; and it is a sadder truth that some scholars treat collectors with scarcely concealed contempt or, at best, jocular patronage."[15] It may be so—though not within my experience—but I hope it is rarely so.

Sometimes collectors treat scholars with bewildering generosity. A scholar is allowed the run of the collection, say, and is even permitted to take manuscripts to his own place of residence; he forms the impression that he has been given exclusive permission to print anything he chooses in any way he likes, and that the owner considers the manuscripts to be of no interest or value. (In a few cases, an owner has urged a scholar to take the manuscripts as a gift.) Sometimes, however, the owner's ignorance of the ways of scholars and of scholarship leads to misunderstandings, as when a scholar discovers that two or three people who used the material before him are publishing it, or that the collector really does not wish to see it printed until later. As an aid to understanding, the scholar is well advised to include, in his letter of thanks to the collector, a precise statement as to what he hopes to publish and a request for permission to do so; that occasion may also be an appropriate time to record, for the information of the collector, any conclusions that the scholar has reached from working with the manuscripts.

Regulations

Regulations governing the use of manuscripts are relatively uniform from place to place. Some libraries issue very detailed and explicit regulations: the British Museum rules cover two printed pages and include twenty-five items. Some libraries have no stated rules, and some (Royal Library, Stockholm and the Houghton Library of Harvard) keep their rules intentionally hazy to allow latitude in the administration of them and a high degree of personal control. This latter plan makes me a little uneasy, as benevolence is a quality one should expect in librarians without having to accept dictatorship along with it. But doubtless this plan is no more than a reflection of the older-fashioned view of librarianship, to which I have earlier alluded.

For the most part, the common regulations prohibit behavior serious scholars are not likely to indulge in: "manuscripts may not be leaned on, written on, folded anew, traced, fastened with rubber bands, or handled in any way likely to damage them. Eating and smoking are prohibited in manuscript reading rooms" (Yale). At many libraries, there are prohibitions against bringing briefcases, bookbags, outdoor clothing, umbrellas, or packages into the manuscript reading room; the use of ink or ball-point pens is generally (but not universally) forbidden, and at only a few libraries is

[15] "The Interdependence of Rare Books and Manuscripts: The Scholar's View III," *The Serif*, 9 (1972), 21.

one allowed to use one's own typewriter. Understandable care on the part of curators (and their unhappy experiences with inexpert readers) is reflected in some of the rules: "Readers must not place books, papers or other manuscripts upon an open manuscript" (British Museum); " Unnecessary fingering and handling of the documents is to be avoided" (Public Record Office). Most appealing, perhaps, is the plea to scholars "di trattare i libri e specialmente i codici con il maggiore riguardo e delicatezza" and also "di osservare rigorosamente il silenzio, scambiando le parole di necessità con tono di voce basso" (Vatican Library).

All of these remarks may soon sound like a description of the good old days, however. An increasing number of thefts of rare material from several major libraries, particularly in the United States and England, has led to more restrictive policies in the use of manuscripts and to closer surveillance over scholars, beginning about 1972-73. Closed circuit television and double security checks of persons entering and leaving are in effect at several places. Severe limits have been placed on what may be taken into reading rooms; at Texas, for example, notes may be made only on 8 ½" x 11" yellow paper or note cards, men may not wear suit coats into the reading room, and much working material that the scholar might earlier have expected to have with him must now be checked in a public locker. Of course these measures are regrettable; and they do work against the best conditions for research, which thrives on openness and independence. But a world of violence, with hijacking and theft, takes away some of the scholar's accustomed freedom even in these relatively trivial ways.

The mechanics of requesting the specific material one wants varies a good deal from one library to another. In the United States, it is relatively easy to learn how to fill out a call slip in order to see a certain manuscript. In some European libraries, however, the procedure is so complex that special instructions may be necessary to fathom the system. The intricacies of the several catalogs at the Bibliothèque Nationale and of the defined steps in the use of call slips are set forth (amusingly, perhaps) in an article in *PMLA* (88, 1973, 550-56); these complications (and those at some other European libraries, such as the Vatican) may appear baffling or ridiculous to impatient American scholars, but they are nonetheless essential to gain access to the materials.

At some libraries, particularly in Europe, and more particularly with respect to medieval manuscripts, there are limitations on the number of manuscripts that may be consulted at a time, or on one day. At the Public Record Office (and at other places as well) the limit is three at a time; at the John Rylands University Library of Manchester the limit is three unbound manuscripts a day, normally, while three a day is the maximum at the Vatican.

Aids

I have already urged the importance of learning about the holdings of a library before visiting it. "Readers will save themselves a good deal of time and trouble," the Public Record Office advises readers, "if before coming to the Office they have familiarised themselves with the printed sources for the subject of their research and have a clear

picture of the material they can reasonably expect to find." At most libraries, readers will also save themselves time and trouble if, after arrival, they learn what local aids to readers are available to them: the general catalog of manuscripts, of course, but there may also be detailed catalogs of special collections, finding lists, special indexes, chronological and subject guides, summary reports, calendars of uncataloged collections, and the like. In fact, these internal finding aids maintained within a library are sometimes more useful to scholars than the usual general catalog of manuscripts. It has even been suggested that, for the future, it would be an improvement either to abandon the general catalog of manuscripts or to incorporate it into an entirely different format—"a single descriptive system based on cumulative indexes to finding aids, a less costly, more efficient, more comprehensive procedure."[16]

A very few libraries (like the Huntington) have a printed *Readers' Guide*, which offers an introduction to the use of the collections, catalogs, and services. Otherwise, the visiting scholar should consult with knowledgeable staff members to learn what aids the library has that may speed his work. I have noticed that more experienced scholars seem to have more questions for the curatorial staff. It is certainly wise to seek advice and assistance from staff members who are familiar with the collections being used and who work with the manuscripts every day. Their help is frequently invaluable: they may know of special indexes or calendars that are kept behind the scenes to use in servicing the collections, they may think of other collections that have related manuscripts, they may know of unrecorded or uncataloged material of interest, they may be helpful in a hundred other ways. I know that experienced scholars will join in this panegyric to manuscript curatorial staff for the assistance they offer to scholars.[17]

Photocopies

The mechanics of research was radically altered when photocopying (particularly microfilming) became widespread, and the way in which scholars work has changed even further in the decades since the advent of the quick copy, or xerox. Libraries have faced these newer ways of using manuscripts with somewhat different policies.

In general, they are willing to make photocopies of their manuscripts for the use of scholars. Photocopies greatly ease the work of the scholar. When he knows what he wants, a microfilm may enable him to avoid a long and expensive trip. (Some librarians complain about what they call fishing orders: extensive photo orders, often not paid for out of personal funds, from a scholar who wants to see whether there may by chance be something of interest to him in a collection.) Photocopies make it possible

[16]Richard C. Berner, "Manuscript Catalogs and Other Finding Aids: What Are Their Relationships?" *American Archivist*, 34 (1971), 372.

[17]An eloquent statement, with many examples, of the valuable help that manuscript curators can and do offer to scholars is contained in an essay by Philip D. Jordan, "The Scholar and the Archivist—A Partnership," *American Archivist*, 31 (1968), 57-65.

to keep an exact and permanent record for further reference, and xerox copies can often save time and increase accuracy in comparison with hand copying or typing. Experienced scholars usually find it more convenient to make extensive transcripts from photocopies rather than from original manuscripts, particularly if the original is in a distant library: working at the place of one's choice gives easier access to reference books and knowledgeable colleagues, deciphering difficult handwriting is often easier when the copy can be marked up, and sometimes a good photograph is more legible than an original manuscript. Of course photocopies will not serve every research purpose, such as examination of watermarks, or determining the color of ink, or distinguishing punctuation marks from discolorations in the paper, but they are of incalculable value in research; transcripts made from photocopies should, however, always be collated against the original manuscript prior to publishing the transcript.

There are, however, certain limitations that scholars encounter when they seek to have photocopies made of manuscripts. Almost no libraries will allow individuals to do their own photographic copying of manuscripts—the Library of Congress is a rare exception—but virtually all libraries of any size have either a photoduplication department or regular commercial arrangements for making photocopies. There are tremendous differences in the length of time required for photocopies: a few libraries can regularly provide them within several days, a large number regard two or three weeks as their normal time, and some (particularly foreign libraries) require months, even six or more. Xerox copies (when they are allowed) are usually done more promptly; microfilms, regular photography, and color work usually take longer. Some libraries prohibit making xerox copies of their manuscripts: the most notable are the New York Public Library and the British Museum; others include the Royal Library in Brussels and (for older bound manuscripts) Trinity College, Dublin, while a good many (such as the Bodleian Library) do not allow xeroxing of illuminated manuscripts. On the other hand, the Library of Congress and the University of Illinois at Urbana allow scholars to do their own xeroxing of manuscripts on coin-operated machines.

The prices charged by different libraries for photographic work are within the same general range. Sometimes scholars feel that these prices are excessive, perhaps because self-service fast copying machines generally provide adequate work at cheaper rates. I think that a word should be offered in defense of libraries: considerable staff time is involved in locating the manuscripts and handling the order, the work is usually done with care by trained operators on good equipment, and the photographic department ordinarily operates at a loss.

Scholars will sometimes find that manuscripts of importance to them are in the hands of dealers. Although dealers often allow scholars to see their manuscripts, dealers generally do not allow photocopies to be made of them, or permit them to be printed. Their basic objection is that publication or photocopying reduces the commercial value of manuscripts. It is commonly thought that manuscripts that have been published bring

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less on the market than manuscripts that are unpublished.[18] Most dealers feel that a purchaser would regard it as unethical on the part of a dealer to allow a photocopy to be made of a manuscript later offered for sale, since the existence of a floating photocopy takes the manuscript out of the exclusive control of the purchaser. I believe that the acquisition policies of most libraries favor the purchase of unpublished manuscripts over those that have been published, since the value of the latter is generally less for research purposes; and I think that the acquisition policies of some libraries lean a little away from the purchase of manuscripts that seem likely candidates for publication in full in the reasonably near future, such as unpublished letters by major writers.

Some libraries allow scholars to have photocopies of manuscripts, but with stipulations about returning them after use. At the Houghton Library of Harvard University, scholars are permitted to purchase photocopies of manuscripts, but "they may not be used by or transferred to any other person or institution without specific permission, and are ordinarily to be returned to the library when the reader's active use has come to an end." Moreover, "the library may require an archival film for retention to be made at the reader's expense." At the University of Texas, "Reproductions remain the property of the Library and are due and returnable within an eighteen-month period; extension of use may be granted upon application. The fee charged for copying covers the cost of processing and provides means of study. It does not indicate that copies become the property of the user." At the Newberry Library, photocopies of modern (nineteenth- and twentieth-century) manuscripts may be purchased by scholars for study purposes only and are to be returned "after use"—theoretically, within thirty days—at which time they are destroyed. The Bancroft Library and the University of Leeds require that photocopies be returned "when finished with," while at Yale "the Library reserves the right to request the return of photocopies [of manuscript material] and to prohibit the making of duplicate photocopies from those furnished by the library." The State University of New York at Buffalo does not sell—but only lends, for four weeks—microfilms of manuscripts, and then only to the Interlibrary Loan Department of University Libraries, the premises of which they must not leave.

The libraries I have just mentioned are very much in the minority in setting these limitations for scholars, and I hope their number decreases. The policy of the Bodleian Library is, I believe, one that is in the better interests of scholarship: "In contra-distinction to the practice in some places we make it a condition of granting permission to have photocopies of entire manuscripts that the copies shall be deposited after use in a public library. This applies whether negatives or positives are supplied. We strongly deprecate the practice of those libraries which charge a scholar the price of

[18]For a clear and forthright statement by a manuscript dealer, see Mary A. Benjamin, "Shall the Dealer Permit His Manuscripts To Be Copied?" *Collector*, 60 (1947), 49-54. Her answer to the question in the title is, like Melville's grand truth about what Hawthorne says, "NO! in thunder." An effort to take the other side was made by Henry Bartholomew Cox, "Publication of Manuscripts: Devaluation or Enhancement?" *American Archivist*, 32 (1969), 25-32; but I have not heard of any dealers who have changed their views as a result.

making the film and then require its return."

The practice of requiring scholars to return photocopies they have paid for was the occasion for an eruption of letters in the pages of the *TLS* a few years ago, and the issues may be clarified by a quick review. Under the heading "New York Public Library," William St. Clair reported, on 19 January 1967, that he had been told by the Curator of the Berg Collection of the New York Public Library that he could borrow a photographic copy of the manuscript of Byron's *Curse of Minerva* for $15.25 provided he promised that he would not, without written permission, quote from it or allow anyone else to examine it, and that he would return it without making any copies of any kind. He asked the public to shame the Library into changing its restrictive policy to resemble that of the British Museum. A prompt response was printed on 26 January 1967, under the same heading, from John D. Gordan, then Curator of the Berg Collection. The manuscript in question is, he asserted, "an important manuscript that the library wished to have edited as a whole in connexion with Lord Byron. . . . Byron manuscripts of the importance of 'The Curse of Minerva' do not often appear on the market and when they do are extremely expensive. It is therefore the responsibility of the curator of the Berg Collection to see that they are utilized to the best advantage of the scholarly world when they appear in print either in part or as a whole. In order to do this the Library must retain some voice in the way its properties are used. I can provide examples of similar procedures at other significant American institutional libraries. Some, indeed, seldom allow photocopies of important materials." Support for the Library's position came from fellow New Yorker Leon Edel, who on 23 February 1967, under the same heading, argued that indiscriminate xeroxing is tantamount to publication and might violate the law, that most Ph.D. candidates are not qualified to use manuscripts, that librarians have a responsibility to protect the interests of dedicated scholars and professional writers, and that participants in this controversy want to open the door "to general chaos" and "create a situation in which some owners of archives will think twice before depositing them in a library. I believe some of your correspondents have overlooked this very important matter." Finally, I will quote from the statement of British Museum policy, alluded to in the first letter I cited, as set forth under the same heading by T.C. Skeat, then Keeper of Manuscripts at the British Museum, in a letter of 2 March 1967: "Students have unrestricted access to our collections (except where they are reserved from public use, e.g. at the wish of donors or on security grounds) and may freely read, copy, or make notes from manuscripts. The question of control arises only where photographs are ordered, and then only in the case of material which is both in copyright and less than 100 years old. In such cases we must ask the applicant to produce the authority of the owner of the copyright before carrying out the photography because if we failed to do so the museum might be committing a breach of the Copyright Act. But this has nothing to do with access in the normal meaning of the word."

The reasoning employed in one or two of these letters cries out for examination, but I pass over the details in favor of the main issue of library control of the use of manuscripts. This issue is worth at least a brief

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exposition, I think, for many scholars will have to cope, because of it, with a more limited use of photocopies than they might wish. (Likewise, the same issue underlies the extreme reluctance, often refusal, of a good many libraries, such as the University of Texas, Yale, the Huntington, and the John Rylands University Library of Manchester, to allow collections of their manuscripts to be photographed for deposit in another library.) The library argument in favor of control turns mainly on the claim that control is of value to scholars and scholarship. So long as the library knows who has used a given manuscript and who has sought permission to publish it, any scholar can be informed of prior use and permission: thus the scholar can consult with the earlier worker and learn of the nature and progress of his work, needless duplication of effort can be prevented, fruitful exchange and cooperation facilitated, and the course of true scholarship made to run smoothly. It is wonderful to observe what persuasive arguments can, in need, be summoned up from the vasty deep. Moreover, in the background there is also the hovering thought that libraries have the responsibility to see that their manuscripts are used to the best advantage, and the consequent necessity to select scholars whom the librarians consider the most deserving. Hence the ennobling metaphor of the librarian as judge of scholars; a more apt figure, perhaps, could be that of the librarian as traffic officer.

It is evident, in any event, that libraries tend to lose control over their manuscripts whenever photocopies are made of them. Those copies can be copied, and even the signing of a form or the requirement that the copy be returned cannot effectively prevent the proliferation of copies. Under these circumstances, I doubt that libraries can reasonably expect to maintain the control that many of them seek, and I think that their energies might better be directed toward other kinds of help to scholars and scholarship. I believe that the position taken by the Bodleian Library is basically sound: "With all the modern technical facilities of reproduction it seems unrealistic for a library to attempt to exercise control over films or photocopies of its manuscripts. It seems to us, in general, beneficial to the republic of letters that photocopies of manuscripts should be as widely and freely disseminated as possible."

The typical library point of view should also be considered, however. As the owners of manuscripts, their self-interest might well compete with their service to scholarship. They might reasonably prefer not to allow photocopies of complete manuscripts or of collections to be available elsewhere: the prestige of the library as the holder of the originals might be diminished, and its attractiveness as a working place for scholars might be diluted if any considerable body of its manuscripts could be used elsewhere. Moreover, many libraries have a natural reluctance to hand over, especially to another library and for a small sum, a microfilm of material for which they have just paid a large sum.[19] In the long view, it is essential

[19]Howard H. Peckham tells the story of an institution that bought a manuscript collection for $20,000. When another library asked for a microfilm of it, the new owner approved and suggested $10,000 as a fair price, as then the collection would exist in duplicate ("Policies regarding the Use of Manuscripts," *Library Trends*, 5, 1956-57, 365-66).

for the best interests of scholarship that libraries feel thoroughly justified in acting vigorously to acquire the manuscripts that future scholars will wish someone to have collected and preserved. It may be that a measure of possessiveness on the part of libraries is a necessary ingredient of that justification.

One final—and very important—limitation to obtaining photocopies has to do with legal restrictions against copying unpublished manuscripts that may enjoy certain legal protection against publication. The effect of literary property rights on the use of manuscripts is the subject of the next section of this pamphlet. Here I wish to offer a brief summary of possible legal restrictions to supplying photocopies and how libraries act when they receive a request from an individual scholar. I assume for the moment that the scholar wants the photocopy for his convenience in study or reference; I will later discuss requests for photocopies incident to publishing them, as those requests raise certain additional issues.

Some libraries are hesitant to allow even one photocopy to be made of a manuscript that may enjoy legal protection, on the grounds that the making and issuing of a photocopy might be construed as a form of publication and thus be an infringement of the law. Moreover, libraries fear that such a photocopy might be extensively recopied or even published without permission, and that they might thus be held as accessory to breaking the law. It is true that this hesitation is based on a network of mays and mights and possiblys, but caution on the part of institutions is a familiar posture. Occasionally, a library may decline to allow a reader even to see a manuscript of which the literary rights are protected.[20] This decision is presumably made—improperly, I should say—on the grounds that the scholar who is allowed to see a manuscript may copy it and may publish it without permission, thus infringing the literary rights.[21]

Most libraries try to pass their obligation on to the user by requiring him to sign a quasi-legal statement of assumption of responsibility. If a statement on this subject is not included in the application for admittance, it usually appears on the form requesting photocopies. This one, used by Princeton, is characteristic: "I represent that this order for a photocopy of each of the materials listed below is in lieu of a loan or manual transcription and that I require the copy solely for my private use for research purposes. *I understand that I cannot legally sell or further reproduce the copy supplied without the express permission of the copyright proprietor, if the publication is covered by copyright.* I assume the responsibility for copyright infringement arising out of this order or the

[20]Such a case was reported by Tom Winnifrith in a letter to the *TLS* for 22 Jan. 1970, under the title "Permissions." He said that the Council of the Brontë Society had refused to allow him to see certain documents in the Brontë Parsonage Museum; "the Council of the Brontë Society have repeated the word copyright at me as if it were a dragon to repel all intruders."

[21]Sometimes it happens. One recent case involved a reader at Cornell who was allowed to consult certain Joyce letters only with the explicit understanding that there were prohibitions against their publication. The reader proceeded to copy them, either from memory or surreptitiously, and published them. The resulting repercussions were heard back and forth across the Atlantic for a time.

use of materials requested and I will hold the Trustees of Princeton University harmless from any misuse of such material."

In addition, most of the major libraries tend to exercise further caution with respect to relatively recent manuscripts, for fear the authors (or their heirs or legal representatives) might appear and raise objections. In the United Kingdom, a special provision of the Copyright Act of 1956 authorizes libraries to supply photographs of certain manuscripts—those more than one hundred years old and where more than fifty years has elapsed from the end of the calendar year in which the writer died—for research or study, despite the fact that the manuscripts are still protected by copyright. This dispensation does not authorize the user of the photocopy to publish the material without specific permission of the copyright owner, but it does allow British libraries—the British Museum, the Bodleian, Cambridge, Edinburgh, the National Library of Wales, and so forth—to supply photocopies of the specified material without breaking the law. The Public Record Office is specially authorized, in addition, to supply a photocopy of any public record in accordance with the Public Record Act of 1956. In Ireland, however, the laws are different, and Trinity College, Dublin, for instance, cannot venture to be so liberal: photography is there considered a form of publication, and manuscripts under copyright are not photographed without permission of the owner of the copyright. In Europe, practice varies. Danish copyright law, like British, allows libraries to make photocopies of manuscripts under copyright for research purposes, provided no more than two copies are made. French law similarly authorizes photocopies when they are strictly reserved for private use.

In the United States, there are no special dispensations that allow libraries to photocopy any protected manuscript material with impunity. It is therefore of special interest to observe the practice of the Library of Congress, which has the Copyright Office under one of its wings. The policy of the Library of Congress is to photocopy, without legal ceremony, manuscripts written more than fifty years before the date of copying; more recent manuscripts are photocopied only if the owner of the literary rights has surrendered them to the public or otherwise given permission to have them copied, or if no literary rights exist (as with official government letters). Privately, officials of the Library of Congress admit that this "fifty-year rule" is altogether arbitrary, and I think that scholars should join in praising them for a measure of boldness not usually associated with government service. The New York Public Library has adopted the policy of the Library of Congress, and it deserves congratulations for doing so.

Most American libraries have not taken a decided stand on this matter. Many seem to be willing to make a single copy of any manuscript for research or study unless specific restrictions are attached to it, but almost all libraries inferentially acknowledge the problem by the phrasing used on the form for requesting photocopies and by requiring the user to accept whatever responsibility comes his way as a result of the photography. Most libraries are careful about copying manuscripts in special collections of the works of an author with a watchful publisher, estate, or heirs.

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Permission to Publish

Virtually all libraries are at pains to make it clear that scholars are required to seek special permission before they may publish any manuscript material. This permission is in addition to the permission to use the library, to consult manuscript materials, and to obtain a photocopy for study purposes. Only one or two libraries (such as the National Library of Wales) specifically consider that permission to consult carries with it permission to publish.

A scholar is normally free, without seeking this permission, to use in his publications what he has learned from consulting a manuscript, provided he does not reproduce or quote the manuscript in whole or in part. He may use the manuscript, without permission, as evidence for establishing facts or for forming opinions or for reaching conclusions, he is free to paraphrase or summarize the contents, and he can cite it as his authority. But he may not quote it or quote from it or otherwise reproduce it.

Scholars realize, generally, the conditions under which they are free to include short quotations from printed sources protected by copyright without seeking special permission; a summary of this situation, and what is allowable under the doctrine of "fair use," is included in *The MLA Style Sheet* (section 13f of the Second Edition). No such doctrine of "fair use" applies in the United States with respect to unpublished manuscripts, however, and scholars are not free to include even short quotations from them in their publications.

It is normally regarded as an essential courtesy to obtain the permission of the library that owns the manuscript, even though it may not own the literary rights—a matter that will be more fully treated in the next section. A characteristic statement on this subject is contained in the rules of the Houghton Library of Harvard: "The publication of manuscript material, wholly or in part, requires the written permission of the Librarian or his deputy. A letter of application should specify the manuscripts or excerpts to be quoted and should indicate the general context in which they will be used." Only a relatively small number of libraries feel that it is unnecessary to seek their permission: the Library of Congress is the major American example; the Royal Library in Brussels and the Lilly Library of Indiana University follow the same policy. Some that require permission (such as the Royal Library, Stockholm) candidly consider the granting of permission as "a matter of empty form."

In general, libraries are very cooperative in giving permission to scholars to publish manuscripts in scholarly works. (Again, literary rights not owned by the library are another matter.) Almost all libraries expect a scholar to acknowledge, in print, where the original of the manuscript is located, and sometimes they specify the form that the acknowledgment should take. Occasionally a library may ask for a permissions fee if the work is a commercial product intended to yield a financial return; frequently libraries ask for a free copy of a publication that prints any substantial amount of their manuscript material.

Most libraries try to keep a record of the requests that have been honored for permission to publish a given manuscript, in whole or in part.

If permission to publish has earlier been given to another scholar, libraries will usually so inform the new applicant: sometimes this information is offered neutrally, but sometimes the applicant is made to feel that he ought to withdraw his request in favor of the other scholar.

In point of fact, very few libraries any longer grant exclusive permission to one scholar to publish a manuscript or manuscripts. A generation or two ago, it used to be common practice for a library to "protect" the work of a scholar by refusing permission to subsequent applicants, or for a donor to impose a restriction (as a condition of a gift to a library) that a specified scholar have exclusive use of the materials until his project was completed. There is a logically appealing side to this protection, particularly when it favors a scholar who has embarked on a large project (such as an edition of the letters of a major writer) and whose work might be undercut by another person hastily putting into print some or all of the material on which the earlier scholar has worked deeply. (This position is still supported by a few scholars, particularly those who have become committed through years of effort to a single author or a single project, and by the librarians of a few major institutions.) In the past, a library might sometimes grant permission to a subsequent scholar if the first scholar was willing to cede a portion of his "rights" to a later applicant. All of this now sounds very much like homesteading or staking out claims. It was a procedure with various shortcomings. Claude M. Simpson, Jr. has asserted that, of all restrictions imposed on scholars, "the chief irritant I daresay is the exclusive privilege given to a single researcher, in some instances without limit of time. In a few notorious current examples, an eminent scholar's exclusive privilege conferred by executors has been so broad as to prevent the publication of independent discoveries made by others. Perhaps the quarrel is less often with library policies than with conditions imposed by donors."[22] Libraries that allegedly do not make their manuscripts available are sometimes referred to sharply by scholars.[23]

Many of the exclusive permissions granted in the past have not resulted in any publication at all, and forty years after the grant an original permittee might still be protecting his claim and alleging that his work was almost, almost ready for publication. In some cases material has been so entangled in a web of permissions that much-needed work—an edition of the letters of Nathaniel Hawthorne, for example—could not be published.

Many libraries are now explicit in their policy of not granting exclusive permission to anyone. Examples are the Folger, the Lilly Library, Stanford, the Huntington, the Library of Congress, the British Museum, the Public Record Office, Cambridge, the Bodleian, and the Royal Library, Copenhagen. Still, a good case can be made for reserving specific materials essential to the successful completion of a major project. The conditions that ought to obtain are, I think, that there is a clear need for the specific

22. "The Interdependence of Rare Books and Manuscripts: The Scholar's View I," *The Serif*, 9 (1972), 9.

23. "There is no complete collection of Shelley's known letters, owing to the refusal by the Pforzheimer Library in New York of access to the letters which they claim to possess." John Buxton, *Byron and Shelley: The History of a Friendship* (New York: Harcourt, 1968), p. 274.

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materials, that the project is of real importance, that it would be seriously damaged by separate publication of the material in question, that the scholar has demonstrated competence and reliability in keeping to a reasonable schedule, and that the reservation of the material will not seriously impede the completion of other worthy projects. Under these conditions, one might see justice in the reservation of certain manuscript materials for the use of Leon Edel in completing his biography of Henry James, and one might understand the refusal of those in control of certain William Butler Yeats material to allow Denis Donoghue, as biographer, to have exclusive use of manuscripts that other scholars wished to use for other purposes. A handful of important libraries are prepared to give exclusive permission under unusual circumstances, at the judgment of the librarian: these include the Houghton Library, Yale, Princeton, UCLA, the American Antiquarian Society, the Pierpont Morgan Library, and the University of Chicago; in many cases, this exclusive permission actually consists of prior rights for a limited, specified period of time, such as (with the Morgan Library) five years.

It is not, in my judgment, part of the normal responsibility of libraries to control the way in which scholars use manuscript material. There are other voices in other rooms, however. "I suggest," wrote one scholar prominent in editorial circles, "that librarians and curators may have an obligation to impose certain editorial standards as a condition for the use of important manuscripts. . . . It would make good sense for libraries to require scholars to submit a sound editorial plan before turning them loose on major manuscripts."[24] I trust that this suggestion does not take root.

It has been a long time since it was accepted practice for libraries to choose the scholar who should use a given set of their manuscripts, and then protect his exclusive privilege. In the meantime, free access has become more and more nearly universal. In my opinion, the closer we can come to having manuscripts openly available to all qualified scholars, the better will scholarship be served in the long run.

[24]Bruccoli, "The Interdependence of Rare Books and Manuscripts: The Scholar's View III," p. 20.

LITERARY PROPERTY RIGHTS

Basic Facts

The use of printed material is governed by law when the material is protected by copyright. Scholars know, generally, how their use of that material is limited by copyright law. One may not include in an anthology, for example, a poem from a book protected by copyright, and one may quote in a scholarly study only limited passages from a copyrighted book without getting permission from the publisher of the book or the owner of the copyright.

The scholarly use of manuscripts—or unpublished writings—is also limited by law, and those of us who work with manuscripts should certainly be acquainted with the basic elements of the laws that protect them. A recent writer has described any scholar who does not understand these matters as "a menace to the collector and the library."[25] What is at issue is, essentially, who has the right to make public any writings that have up to that time not been published. The simple answer is that this right is reserved to the writer. Nevertheless, the scholar is often able to use and publish manuscript material without running foul of any law. The purpose of this section is to indicate the circumstances under which he may and may not do so.

The writings of a person working for himself are considered to be his own property; he is, in the classical sense, their "maker," or their "inventor." Writings thus belong to their writer as his property, and are legally controlled by laws of property, in particular by laws of literary property.

Ownership of a manuscript as a piece of physical property does not, however, always imply ownership of the manuscript as a piece of literary property. In other words, it is possible to own the paper and ink (the physical property) without owning the word patterns on it (the literary property). It is true that the owner of the physical property is free to shred or burn or otherwise destroy the manuscript that he owns. If the writer is dead and if no other copy exists, the literary property may thereby also be effectively destroyed; but the destruction of the literary property is incidental, and it does not follow that the owner of the physical property (that is, the manuscript) necessarily has any control over the literary property. If the writer is alive, he may produce another copy from memory and do what he wants to with his own literary property. And, too, there may, somewhere, be another copy.

Sometimes the ownership of literary property is called literary rights. When a writing is published (that is, made available to members of the general public) in the usual way—printed in a book or in a periodical, and copyrighted—the rights of the copyright owner are then protected through

[25] Bruccoli, p. 21.

statutory law. (Some unpublished writings, such as dramas and works prepared for oral delivery, may be registered for copyright and still remain unpublished; but this is an unusual procedure, and most writings, such as novels, short stories, poems without music, letters, and diaries, may not be so registered.) In the United States, the law under which published writings may be protected is Title 17 of the U.S. Code, commonly called the Copyright Law. If a writing is published and not copyrighted, it goes into the public domain: the entire public then has access to the work, and anyone may (so far as literary rights are concerned) copy or republish it in any way he likes. It is often for this reason that writers and other owners of literary property are watchful lest their property be made public by someone else.

Copyright

Although this essay is about writings that are unpublished, it may be helpful to summarize, as background, the kind of protection that is afforded published works that are copyrighted. Only the arrangement of words is subject to copyright; titles or short phrases or ideas cannot be copyrighted. The term of copyright in the United States is twenty-eight years, renewable for an additional twenty-eight years. The length of the term in other countries is not uniform, but a common length is fifty years after the death of the author, or fifty years after posthumous publication. When the term of copyright ends, the writing is in the public domain; it does not revert to the kind of protection it had before it was published.

Traditionally, a distinction has been drawn between American and European philosophies of copyright. Europeans (so the distinction runs) commonly think of copyright as an inherent right of the individual author, while Americans think of it as a monopoly granted for the public good in order to stimulate and encourage artistic creation. Actually, the protections offered by the United States laws and by those of European countries are quite similar. United States law is based on the constitutional provision for it: "The Congress shall have power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries" (Article I, paragraph 8). Every expression in this article has been explained and glossed and commentaried and explicated at length, with the result that an extensive body of knowledge has been created where once was nothingness. It is difficult to make legally accurate statements on the subject of copyright law without making many reservations or exceptions, which often obfuscate whatever meaning the statements may have had to begin with. My ambition is therefore limited to the presentation of a brief, working statement of the subject.

The first United States Copyright Law was passed in 1790, and there were comprehensive revisions in 1831, 1870, and 1909. The present law is basically the same as that passed in 1909. It is considered outmoded and anachronistic, but it has proved impossible, so far, for Congress to enact a comprehensive revision that takes into account the significant technological changes that have vastly altered the communication, reproduction, and

dissemination of verbal, visual, and auditory material. The law reflects a world in which the author wrote one copy of his work and the printer composed and printed books from it. Accommodation has been very imperfect to a world in which publication can be achieved—either to an astonishingly large public or to a precisely limited public—without manuscript or print but through instantaneous communication by television and radio, through writings being stored and retrieved by computer, through immediate photocopy, through facsimile transmission on demand, through tapes, recordings, film, and playback. Studies for a modern revision of the law began in 1955, and various new measures have been introduced (and sometimes passed) either in the House or in the Senate, beginning in 1964. But the enactment of a new law has foundered on the rock of such controversial issues as the domestic manufacturing clause, jukebox exemption, cable television, and other matters apparently remote from what literary scholars normally think of as essential copyright problems. The proposed revisions commonly set the term of copyright *to extend* (as in most other countries) for fifty years after the death of the writer, recognize and describe what is "fair use" of protected writings, authorize libraries to make a photocopy of copyrighted material for use in another library in connection with research or teaching, and (most important for the present subject) give unpublished material statutory protection (under the same terms as for published material) rather than the unlimited common law protection which now prevails. These provisions would clarify several of the most troublesome questions now facing librarians and scholarly users of manuscripts. All of these matters are for the indefinite future, however, when the present law is replaced by new legislation, the terms of which remain to be seen. In the meantime—which may be a long time—scholars must operate under current law.

Common Law Protection

The essential purpose of this section is to set forth and discuss the legal protection now given to manuscripts—"unpublished writings" is the usual legal term—which literary scholars might wish to use. First, about manuscripts in the United States. Their protection is under common law, and every literary work is automatically protected by common law as soon as it is created. Common law is under state (not federal) adjudication, and no registration in the Copyright Office or action by that office is necessary for an unpublished literary work to enjoy this protection. Protection under common law ends if the literary work is made public or if copyright is secured. Otherwise, protection continues indefinitely; theoretically, at least, it continues forever or (in legalese) "in perpetuity."

From the point of view of the scholar, the statutory protection accorded published works under copyright is easier to deal with: at least one knows that the writing is protected and for how long, from whom to seek permission in order to quote from it, and that "fair use" is possible. Aside from length of term, the differences in the protection under statutory law and that under common law are not very great. Statutory law establishes minimum damages for infringement, while there is no minimum under

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common law; cases of infringement under statutory law are tried in federal courts with greater certainty about precedent, while cases under common law are tried in state courts (unless there is diversity of citizenship or other like cause) with less certainty about precedent; the claim of what is owned and protected can be clearer under statutory law if copies have been deposited in the Copyright Office, while ownership and nonpublication under common law may sometimes be difficult to establish. But the overriding difference is that statutory law protects for a limited term, while common law protects until whenever the writing is published.

Publication is thus a critical point in the life of a writing, the point at which protection under common law ends. "Publication" is not always the distribution of something in print, however, but a technical legal term for making a writing available to the general public. There is no fixed definition or absolute rule as to when publication occurs; it is a matter for the courts to decide in particular instances under litigation. Most court cases deal with unusual circumstances rather than with standard examples of offering printed copies for sale. It has been held, for instance, that the delivery of sermons or lectures before large audiences is not publication, even that Martin Luther King retained the common law rights to his "I Have a Dream" speech because its transmission on national television was not "publication" within the meaning of the law. On the other hand, it has been held that the exposure of a single copy of a manuscript in such a way that any member of the public might have access to it—whether anyone did or not—constituted publication, as did leaving a copy in a hotel lobby where any passerby might see it.[26]

The variations in these and other findings cause librarians, in particular, to be skittish about the use of manuscripts in their collections. In situations of uncertainty, conservative people are hesitant to act for fear of making a mistake, and legal counsel tends to advise the course of action that involves the least risk.

Ownership of Literary Rights

It is often, perhaps usually, left to the scholar to assume any legal responsibility that may befall from his use of a manuscript. If the literary rights appear to be protected under common law—that is, if the manuscript has not entered the public domain through "publication"—the question that faces the scholar is the identity of the owner of the literary rights. Those rights are initially the property of the writer, we recall, and continue to be his until he transfers them (by sale or gift, e.g.) to someone else. When he dies, they become part of his estate and automatically pass to his heirs at law and successively through later generations unless the rights are specifically transferred (either by the writer himself or by some descendant who owns them) outside the line of succession.

It is, of course, exceedingly difficult in most cases to trace even direct descendants for more than a few generations. If one were so fortunate as to

[26]For many examples, see Ralph R. Shaw, *Literary Property in the United States* (N.p.: Scarecrow Press, 1950), pp. 86-95.

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come upon a manuscript of an unpublished work by John Milton, how might one go about discovering who now owns the literary rights? (It has happened before: though Milton died in 1674, the collection of his State Papers did not come to light until 1743, *De Doctrina Christiana* not until 1823, and his Commonplace Book not until 1874.) With a modest amount of effort, it could be learned that Milton's last direct descendant, his granddaughter Elizabeth Foster, died on 9 May 1754. What then? Did his widow give the literary rights to his nephew Edward Phillips when she gave him the poet's papers? Did he or some direct descendant give the rights to someone whose line is not extinguished? Such bramble patches of genealogy and supposition lie across the path of most searchers after ownership of the common law rights to the writings of authors long dead.

It may be possible that people now in the land of the living own the literary rights to any unpublished writings by Chaucer, Cervantes, and Molière; but if this were so it would be a labor of Hercules to find them. Libraries tend to present the task to the scholar, with the intimation that it is his duty to perform it. The British Museum application form for photography declares that "the onus of tracing copyright rests upon the applicant." Most libraries call to the attention of scholars their responsibility for obtaining permission from the owner of the literary rights, and sometimes libraries stipulate the conditions. The University of Texas at Austin is an example of a library that is more aggressively cautious than most: Texas will photocopy manuscripts of authors born before 1850 only if "a reasonable effort" has been made by the scholar to obtain permission from the holder of the literary rights, and at Texas obtaining such permission is mandatory in the case of authors born after 1850. The British Museum reports that, so far as their records reveal, the earliest literary rights that are still under control are those relating to the writings of Gibbon and Boswell.

Ordinarily, the scholar is asked to assume the responsibility in case of claims, and the lawyerly declaration to be signed before using manuscripts at Harvard is characteristic: "In consideration of my being granted permission to examine any manuscript on the terms set forth above, I agree to indemnify and hold harmless the University, its officers, its employees and agents from and against all claims made by any person asserting that he is an owner of the common law copyright or literary property."

The Bodleian Library application form for photography asserts, "No advice can be given by the Librarian in regard to ownership of copyright." In general, however, the library that owns a given manuscript is the most reliable source of information about ownership of the literary rights to that manuscript. The files often contain information about ownership, whether inquiries of that sort have been made in the past, whether the record of acquisition reveals any relevant information, whether there is any known owner. Moreover, curatorial members of the staff are usually able to advise scholars about writers whose works are closely followed, as are the writings of Mark Twain by the Mark Twain Trust, or those of George Bernard Shaw by the Trust bearing his name. They are likely to know of cases where an individual is vigilant, as for the writings of Jack London; or where the terms

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of a will lay down conditions against publication (as Willa Cather's letters, or the poems by A.E. Housman not selected by his brother as equal in merit to his previously published works).

It is not possible to offer a safe rule of thumb as to a date before which scholars need not bother about the question of literary rights. In my experience, however, there is essentially no problem for materials earlier than the nineteenth century. For nineteenth-century writers, there are some—relatively few, actually—whose literary rights are still under control. For twentieth-century writers, the scholar should always make very careful inquiries.

Unpublished Letters

Some scholars are under the impression that unpublished letters are not protected as literary property. I have read the argument that letters really ought not to be protected like literary manuscripts, because scholars and the public have rights to the facts set forth in letters; but current doctrine does not run in that direction.[27] Since letters are among the materials most used by literary scholars in research, it is worth reiterating, strongly, that letters enjoy exactly the same protection that any other "writings" do. Moreover, letters have certain additional protections relating to invasion of privacy, and possibly to libel. In fact, some of the earliest cases at law involved personal letters. In *Pope* v. *Curl* (1741), Curl was prevented from publishing letters written by Alexander Pope on the grounds that Pope owned the literary rights. In *Thompson* v. *Stanhope* (1774), Lord Chesterfield's widow was prevented from publishing Chesterfield's letters to his son because she did not have the consent of the writer (who had died the year before) or of his executors, and on the grounds that literary rights to unpublished writings are passed on in one's estate, like any other property.[28]

Transfer of Literary Rights

The whole question of the transfer of literary rights is crucial to the use of manuscripts in research, but it is a question in which the issues are far from clear. Most libraries take the view that they do not own the literary rights of their manuscripts unless those rights were specifically given to them.[29] Within the last generation, many libraries have made serious efforts to get literary property rights for their manuscripts.[30] The Access Form used by the George Arents Research Library at

[27]Henry Bartholomew Cox, "Private Letters and the Public Domain," *American Archivist*, 28 (1965), 381-88.

[28]Harry Ransom, "The Personal Letter as Literary Property," *University of Texas Studies in English*, 30 (1951), 116-31. For a full account of the earliest English copyright law and its background, see Ransom, *The First Copyright Statute* (Austin: Univ. of Texas Press, 1956). More background material (esp. medieval and Renaissance) is included in Bruce W. Bugbee, *Genesis of American Patent and Copyright Law* (Washington, D.C.: Public Affairs Press, 1967).

[29]A notable exception is the Clements Library of the University of Michigan. "We have assumed all along," their Director says, "that we bought full rights to publish whenever we acquired a collection, and this right has never been disputed."

[30]Cox lists, e.g., 9 historical societies that have been systematically asking for these rights since World War II ("The Impact of the Proposed Copyright Law upon Scholars and Custodians," *American Archivist*, 29, 1966, 222-23.

Syracuse University includes the following Certificate of Gift to be signed by the donor: "I give this property to Syracuse University as an unrestricted gift and relinquish any literary rights that I may possess to contents, unless limiting conditions are specifically stated as follows herein." It is on the basis of the presumption that literary rights are not automatically transferred along with physical property rights that libraries feel the need to exercise special care in not allowing their manuscripts to be used in such a way that the literary rights of others are infringed.

There is another view of the matter, however. One of the basic books on copyright maintains that "the outright sale and delivery of his manuscript by the author, and acceptance by him of a sum of money 'in full payment thereof' must be regarded as carrying all the rights incident to ownership, including the right on the part of the purchaser to secure the copyright as proprietor."[31] Another widely used book on copyright argues that the common law right to the literary property ends if the author gives or sells it to a public institution, or to anyone at all without specifically withholding the literary rights or prohibiting its transfer to a public institution:

> The courts have said consistently that placing a copy of a manuscript in a library, where it may be consulted by any member of a broad public, is a general publication; and, if copyright is not secured, this publication puts the manuscript into the public domain. . . .
>
> The courts have held that offering a manuscript to the public constitutes a general publication whether the manuscript was actually read by the public or not; and that filing a copy in a public office or public place is *per se* a general publication, even where there is no evidence that any member of the public had actually seen it. So long as the common law right of first publication is held to last forever, there would appear never to be a time when a library might legally accept a manuscript unless the right to publish accompanies it.
>
> When the owner of the literary property in a manuscript offers or transfers his writing to a public institution, he almost certainly makes a general publication of it by that action. . . .
>
> When the author offers his manuscript to anyones [sic] who will take or buy it without specifically refusing its sale to public institutions, he is offering it to public institutions, and this has been held to be a general publication which ends the common law right.[32]

The author goes on to consider the status of manuscripts that come to libraries from any person, other than the writer, who does not own the literary property. He argues that, since placing a manuscript in a library is general publication, it is illegal for a person who owns a manuscript to give or sell it to a library unless he owns the literary rights. Libraries do not come off easily, either, as "the very act of accepting the manuscript

[31] *Howell's Copyright Law*, rev. Alan Latman, 4th ed. (Washington, D. C.: BNA Inc., 1962), p. 50.
[32] Shaw, *Literary Property*, pp. 136-37.

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without publication rights may be a violation of common law rights."[33]

I could not blame a reader for frying in impatience at being offered two different views, and for wishing that I would proceed promptly to the Truth. Alas, there is no certain Truth to proceed to. Specific questions can be resolved only by litigation, and somewhat different answers have been given in the past to the kinds of questions that have been raised. It is understandable that libraries have generally ignored this second view, to the effect that literary rights are automatically transferred along with physical property rights by an owner who possesses them. I think that libraries have generally been rather tough in the procedures they have adopted, but scholars should realize that the questions are still open. It is of interest to notice that the Committee on the Judiciary of the House of Representatives observed, in their report of 8 March 1967 to the House on the Copyright Law Revision, that the new bill "would revise the presumption, held to exist under common law, that an author or artist transfers his literary property rights when he transfers ownership of his manuscript or work of art without reserving them" (p. 9). Until these matters are finally clarified–if they ever are–scholars can only work within the limits of whichever view is imposed on manuscripts.

Infringement of Literary Rights

There seem to be relatively few lawsuits involving literary manuscripts. Perhaps those who are tempted to sue remember what happened in *Gulliver's Travels* to the litigation over a cow: the courts of equity did not dismiss the case so long as either party had any possessions left to him.

Infringement of literary property rights, under common law–or of copyright, under statutory law--is a wrongful act which may give rise to a civil suit by or on behalf of the party who has been injured. The infringer is liable to an injunction restraining the infringement, or to the payment of any damages that the owner may have suffered as well as (in theory, at least) any profits that the infringer made from his infringement. In practice, the owner has been able to collect only the damages or the profits, whichever is the greater; as damages are very difficult to prove, the court may fix on a sum in lieu of damages or profits, within limits established by statute.

Once in a while a case of infringement is brought to trial and makes the news. Peter Kavanagh decided in the late 1950s to publish an edition of letters by and to John Quinn, taking his texts from the manuscripts in the New York Public Library, despite a prohibition against publishing them before 1988. He was allowed to see the letters but not to transcribe them or make notes from them. Working an hour at a time, he left the building to record them from memory; in due course, he himself printed an edition.

[33]Shaw, pp. 138-39. Seymour V. Connor tells the story of a writer who offered to the library of the Texas Technological College her manuscript containing rich source material on the history of the area, a manuscript she might later wish to publish. The college officials thought it necessary to inform her that deposit in the library would constitute publication, that the material would pass into the public domain, and that she could never thereafter copyright it. The writer withdrew the offer, and the material was, apparently, lost to historical research ("The Problem of Literary Property in Archival Depositories," *American Archivist*, 21, 1958, 143-52).

The Director of the Library was quoted as having declared that "no one can with impunity violate conditions which the library has agreed to honor," and the Library sued Kavanagh in the New York courts to enjoin him from distributing copies of his book. In 1960, the court required him to tear up 117 copies, leaving half of each with the court. He was allowed to keep two copies for his private use but prohibited from disposing of them or exhibiting them without the permission of the New York Public Library.[34] Peace ensued, with honor I presume.

An earlier case of note resulted in an injunction which prevented printing. The letters of James McNeill Whistler were prepared for publication, the type set, and the presses made ready. At that point, the artist's family obtained a court order, and the printing of the letters was forbidden.[35]

An example of infringement of literary rights in the case of an older manuscript is to be found in the case of the publication of a story by Mark Twain called "A Murder, a Mystery, and a Marriage," which he wrote in 1876. It was sold at auction in 1945 after a long disappearance, and the buyer (a bookseller) decided to publish it, for the first time. The Trustees of the Mark Twain estate refused to grant permission. When publication took place without their consent, they brought suit and won the case.[36]

As a final example, Harriet Monroe received, in 1896, a verdict for $3,000 from the New York *World* because they printed an unpublished ode that she had written for the World's Fair. The suit was not brought under the copyright laws, but under the common law right of literary property.[37]

But one has to search in order to find examples of legal cases in which infringement of literary property is at issue. In short, the laws protecting literary property are not very fierce and not very aggressively enforced, but they are not quite a toothless mastiff either. Enough people get bitten to warrant the caution to beware the dog.

Literary Rights in Other Countries

In this section on literary rights I have been setting forth the situation as it affects scholars using manuscripts in the United States, with a glance or two at other countries. With some exceptions and reservations, this discussion is generally relevant for American scholars carrying on research in foreign countries. I offer here, in condensed form, the principal exceptions and reservations necessary to make this discussion more nearly applicable to the laws of other countries.

The United States is the only major country in which there is common law protection of literary property. Elsewhere, protection derives from statutory act. The most usual period for copyright protection under statute is fifty years from the end of the calendar year in which the author died. A convenient source of fuller information about the details of the

[34]I paraphrase this account from Jean Preston, "Problems in the Use of Manuscripts," *American Archivist*, 28 (1965), 371-72.

[35]Cox, "The Impact of the Proposed Copyright Law upon Scholars and Custodians," *American Archivist*, 29 (1966), 218.

[36]Preston, p. 375.

[37]Arthur S. Hamlin, *Copyright Cases* (New York: Putnam's, 1904), pp. 96-98.

laws in other countries is the extensive encyclopedia, edited by H.L. Pinner, entitled *World Copyright*.[38]

Great Britain. For unpublished literary or dramatic works, copyright is perpetual in Great Britain. Common law rights were abolished in 1911, and protection of unpublished writings was brought under the Copyright Act. For works published (including public performance or offering for public sale as records) during the writer's lifetime, copyright expires fifty years from the end of the calendar year in which the writer died; for posthumous publication, copyright expires fifty years from the end of the calendar year of publication. As I have already mentioned, there is a special provision in the law (Copyright Act, 1956) by which unpublished manuscripts in libraries may be reproduced for research or private study without infringing copyright if they are more than one hundred years old and if the author has been dead for more than fifty years. Transfer of manuscripts by bequest is assumed to transfer literary rights as well as physical property rights unless the literary rights are specifically reserved. "Fair use" of unpublished material for purposes of research, private study, or criticism is allowed in the same way as for copyrighted material that has been published.

Canada. Unpublished works are protected by the Copyright Act until fifty years after publication, whenever that may be. The protection is therefore perpetual for writings that continue unpublished. Transfer or sale of a manuscript does not in itself transfer the copyright.

France. Copyright does not depend on publication, and literary rights are the exclusive possession of the author and of his heirs (or successors-in-title). These rights can be exercised even after the expiration of the exclusive right of exploitation (fifty years after the writer's death). The copyright to a manuscript is independent of the physical property, and transfer of a manuscript does not in itself transfer the copyright.

Germany. Copyright does not depend upon publication. Literary rights are the exclusive possession of the author, and first publication is reserved to the author. Transfer of a manuscript does not transfer the copyright, but it is presumed (subject to rebuttal) that the owner of an unpublished manuscript also owns the copyright if the writer has been dead for fifty years.

Italy. The right to unpublished material is considered especially personal as an inviolable right of the author, and publication depends on fulfilling his express wish. Upon his death, only his heirs or legatees may dispose of his unpublished works. Ownership of a manuscript does not imply ownership of the copyright, and the owner may be required to allow the author or his successors-in-title to inspect the manuscript in the exercise of their rights to the copyright.

Spain. The author has exclusive power over his unpublished writings, and

[38](Leyden: A.W. Sijthoff, 1953-60), 5 vols. The arrangement is topical, and alphabetical by topic; under each topic, separate articles set forth the law in each of the countries treated, in an alphabetical arrangement of the countries. The principal topics of interest in connection with this booklet are: Unpublished Works (IV, 363-78), Manuscripts (III, 145-59), Publication (III, 657-76), Copyright (II, 203-44), Duration of Copyright (II, 530-56), Prohibition of Publication of a Posthumous Work (III, 612-19).

unlawful publication does not prejudice the author's copyright. Upon his death, copyright passes to his testamentary or legal heirs. The transfer of a manuscript does not necessarily imply the transfer of copyright.

Albania-Yugoslavia. A discussion of the special laws of most other countries may be found in the entries to the *World Copyright* encyclopedia mentioned above.

International Copyright

The term "International Copyright" may be misleading. There is, in fact, no arrangement by which an author's writings may be protected throughout the entire world. The protection afforded in a given country depends on the laws of that country. Protection is extended to foreign writings through conventions and treaties with other countries.

These conventions and treaties are important to publishers and to writers whose works require protection in countries other than the one in which their writings are published. Since they are of no more than passing interest in connection with the process of research, a very brief account should suffice.

The Universal Copyright Convention (UCC) is the international treaty to which the United States is a party, along with virtually all other countries the language and literature of which are of professional concern to MLA members. The UCC reduces to a minimum the formalities needed in order to obtain copyright in the participating countries, some sixty in number. In general, participating countries are required to provide the same protection for foreign works as for domestic works. The section on unpublished works provides that "unpublished works of nationals of each Contracting State shall enjoy in each other Contracting State the same protection as that other State accords to unpublished works of its own nationals."

The Berne Convention, of comparable size, established the International Union for the Protection of Literary and Artistic Works in a series of conventions beginning in 1886. Protection of works by citizens of any member country is given in all the member countries if it was first published in any member country. The United States is virtually the only country within the range of MLA professional concern that is not a member.